

FRIDAY UPDATE – FEBRUARY 10, 2006

*The weekly update of the activities of the Indiana General Assembly
A publication of the Indiana Judicial Center*

The second half of the legislative session is underway. Below are summaries of bills heard this week in committee.

If you are interested in reading the text of any bill introduced this session, you may find bill information on Access Indiana at <http://www.in.gov/apps/lisa/session/billwatch/billinfo>.

Past issues of the Friday Update for 2006 are available on-line at <http://www.in.gov/judiciary/center/leg/index.html>.

Civil Law

The Senate Corrections, Criminal and Civil Matters Committee met to hear testimony on **HB 1010**, the **eminent domain** bill. The author, Rep. Wolkins, and Sen. Bray, the Senate sponsor, presented the bill. A number of amendments were made to include pipeline companies and sanitation districts in the “public utility” definition, to add a limitation on the court’s authority to extend the period for a contest action to be initiated to a one-time 30 day extension, and to impose a 20-year limitation on a condemnor’s ability to change the use to which the condemned property is to be put. An amendment to reduce the amount of attorney fees for the property owner who resists the condemnation to \$100,000 was accepted. Sen. Broden presented an amendment to require that the property owner prevail in the challenge action in order to receive attorney fees, which would be capped by the amendment at \$75,000, but Sen. Steele spoke against it, arguing that a prevailing party requirement would discourage owners’ settlements of condemnation suits because if they settled they would not prevail and get the fees. This was one of several amendments on which Sen. Long, Committee Chair, deferred voting until the Feb. 14 Committee meeting, when the Committee will take up the bill again, for discussion only and voting. Other amendments proposed by Sen. Broden, one to require that there have been no reasonable alternative to the condemnation as a condition for eminent domain use, and another to limit the amounts billboard companies could demand from property owners seeking zoning changes, were not voted on. An amendment proposed by Sen. Steele to eliminate the requirement that one of the appraisers be a freeholder in the county and substituting someone who lived within 60 miles of the property was defeated in a 5-5 vote. Testimony was then received from a number of individuals and associations for and against the bill.

The Senate Governmental Affairs and Interstate Cooperation Committee also heard **HB 1114**, concerning **various property matters**, including **adverse possession, social security numbers in documents filed with county recorders, and methods of paying county recorders**. Because there was significant disagreement about the bill and its proposed amendments, the chairman held the bill until the next meeting.

FRIDAY UPDATE – FEBRUARY 10, 2006

Criminal Law

The Senate Judiciary Committee considered **HB 1016**, which authorizes courts to charge a **pre-trial services fee** for offenders supervised by a probation department or pre-trial services agency while on bail awaiting trial. Judge David Chidester, Porter Superior Court, testified in favor of the bill, explaining that the bail statutes already allow courts to release offenders to bail subject to conditions of supervision. He stated that he utilizes his probation department to supervise repeat offenders, but that this supervision is a drain on the probation department's budget because there is not statutory authority to charge a fee for the pre-trial services. The Indiana Association of Bail Agents, an Allen County Council member, and the Indiana Public Defender Council testified in opposition to the bill, raising concerns about probation officer caseloads, indigent offenders and the presumption of innocence before trial. The Chair did not take a vote on the bill and appointed a subcommittee to review the bill with respect to the presumption of innocence, indigency, and city/town courts.

The Senate Corrections, Criminal and Civil Matters Committee heard **HB 1049, controlled substance crimes**. This bill would expand the definition of "family housing complex" to include hotels, motels, apartment complexes, or subsidized housing buildings, and would make neglect of a dependent a C felony if it results from manufacture of cocaine, methamphetamine, or a narcotic drug or was committed in an area in which those drugs were being manufactured, delivered, or financed. Rep. Bell, author, presented the bill and Steve Johnson of the Prosecuting Attorney's Council spoke in favor of it while pointing out it would enhance not only methamphetamine crime but also cocaine and narcotic drug offenses. The bill passed 8-0.

The Senate Corrections, Criminal and Civil Matters Committee heard **HB 1207, home improvement fraud**. The bill, presented by author Rep. Pond, will expand the home improvement fraud offense to include misrepresentations about the likelihood of fire or structural damage if repairs were not made, concealing contractor addresses or phone numbers, failure to provide copies of promised warranties, and other sorts of undesirable contractor conduct. The bill passed 8-0.

The Senate Governmental Affairs and Interstate Cooperation Committee heard **HB 1249**, concerning the **county drug free community fund**. Among other things, the bill gives the Criminal Justice Institute the authority to police violations of statutes on the county drug free community fund. Representatives from the Commission for a Drug Free Indiana, the Criminal Justice Institute, the Indiana Association of County Councils, and other organizations testified in support of the bill. The bill passed out of committee 9-0.

The House Courts and Criminal Code Committee heard **SB 84, Reentry courts**, authored by Sen. Long and sponsored by Rep. Foley. Sen. Long explained the concept behind reentry courts and demonstrated the success of this type of case management by providing the committee with the recidivism statistics of the Allen County program. Sheila Hudson, Executive Director of Community Corrections in Allen County, who has been instrumental in the development and success of the reentry court there, was available to answer questions of the committee. Larry Landis also testified in favor of reentry courts, praising the success of these courts nationally.

FRIDAY UPDATE – FEBRUARY 10, 2006

Rep. Foley offered an amendment that allowed the certification oversight to be placed with a committee of the judicial conference (rather than specifically with CADPAC), and the bill passed as amended 11-0.

The House Courts and Criminal Code Committee heard **SB 246, Sex offenders**, authored by Sen. Wyss and sponsored by Rep. Foley. This is a “consolidated” sex offender bill that defines residence and expands the definition of sexually violent predator. It provides for an “extension” on the use of DNA evidence, and includes out of state crimes to permit a person to be charged as a repeat sexual offender. There was significant discussion about this bill with some testifying in favor of it, but saying it doesn’t go far enough to protect victims and children, while others opposed the bill arguing that it goes too far in punishing the offender. In addition, there was some concern how the provisions of this bill would work with the provisions of HB 1155. Rep. Ulmer, Chair, decided to hold this bill until next week when the committee would consider another sex offender bill, SB 6.

The House Courts and Criminal Code Committee heard **SB 12, DOC administration of sex offender registry**, authored by Sen. Long and sponsored by Rep. Foley. Sen. Long presented the bill and stated that this would place sex offender registration information in one location administered by DOC instead of the Sheriff’s Association and the Indiana Criminal Justice Institute. This bill also requires more stringent standards for where and when an offender must register. Commissioner Donahue testified in favor of the bill and stated that the registry would be web-based and the DOC would provide the backbone to keep the data current. He also committed that DOC would register sex offenders leaving DOC prior to their release. He stressed that the registry would still be a partnership with local law enforcement and the Indiana State Police, as they would be doing a lot of the legwork. The bill passed 9-0.

Family & Juvenile Law

The Family, Children & Human Affairs Committee, Rep. Budak, Chair, heard **SB 139, department of child service matters**, with time limits in CHINS and Termination cases and amendments about paternity affidavits. Rep. Bell, House sponsor, gave a brief overview of the legislation. James Payne, Director, Department of Child Services, described the following time limits he is proposing for CHINS cases: require a factfinding to be held within 60 days after filing of CHINS petition unless there was an admission; require a court to complete a dispositional hearing not more than 30 days after a court finds the child is a CHINS; require the juvenile court to order the county office of family and children or the probation department to file a progress report every 3 months after disposition, permitting a court to order a review after the progress report is filed, but requiring a case review at least every six months; and requiring the completion of the hearing on a Termination petition within 6 months of the date of filing. This amendment was adopted by consent of the Committee. The Committee discussed an expansion of the definition of emergency removal to include the time from that removal until the first court hearing, and a restriction to permit only the paternity affidavit father or the court to permit a DNA paternity test when challenging a paternity affidavit and other amendments. The Chair held a vote on the bill until next week.

FRIDAY UPDATE – FEBRUARY 10, 2006

HB 1001, concerning **state funding for children's services**, was heard by the Senate Tax and Fiscal Policy Committee. Rep. Espich, author of the bill, explained the bill to the Committee. He stated one theme of the legislation is to help fix the fragmented child protection system because fiscal resources vary from county to county. Another theme of the legislation is property taxpayer protection. He noted the bill would create a four year average of what counties spent on children and make this county portion the base of what counties pay. The state would pick up the growth in costs. When a judge's order for the child and family differs from the DCS recommendation and is more expensive, the county would pay the additional cost of the court decree.

A representative from the governor's office testified in favor of the legislation, noting the state would pay for increases in costs of services through available resources. The governor's representative indicated counties do not do a good job in getting federal money, the state can take a statewide approach to the needs of children, specific solutions can be brought to specific problems (like meth) and all state agencies live within fiscal constraints.

James Payne, Director, Department of Child Services testified in favor of the bill. He gave the background of both the CHINS and Delinquency systems, which receive monies from the present Family and Children's Fund. He said the competitive bidding and purchasing power of the state would help control costs. The State would reduce disparity in county funding for child services and would accept responsibility for Indiana's children.

Judge Steve David, Boone Circuit Court, President, Indiana Council of Juvenile and Family Court Judges also testified. He said this bill moves down the road to state funding too quickly. It would take monies from the county and would undermine collaborative efforts already in place. It would decentralize accountability making it more difficult to hold down costs. There could be many recommendations over the life of the case, making it difficult to audit the cost of DCS recommendations. Judges are in the best position for being accountable for children and county expenditures. State reforms, including additional caseworkers need a chance to work. Sen. Meeks said he has heard counties have no control over welfare costs and judges do what they please. Judge David said county funding could be capped with a requirement courts go back to the county council if more money is needed. Counties where funding is too low could be looked at and given assistance. Regional Service Councils could be used to compare costs across county lines.

Judge Charles Pratt, Allen Superior Court, Chair, Juvenile Justice Improvement Committee told the committee that case managers would have the keys to the kingdom in this version of HB 1001. The mediation process in CHINS cases in use in his county would be restricted, since only the DCS caseworker makes the "appropriate" recommendation in this legislation.

Judge Peter Nemeth, St. Joseph Probate Court, said it would be difficult to ask the county for additional monies to fund services not recommended by the DCS. The DCS could use fiscal intimidation for its recommendations. He asked whether CASA would be able to have volunteers, and whether parents and foster parents would be heard when there was no money for their recommendations. He said probation officers would be eliminated from working on predisposition reports since the caseworker would make the "appropriate" recommendation. And even more caseworkers would be needed for the additional probation caseload. State funding needs additional study.

FRIDAY UPDATE – FEBRUARY 10, 2006

Judge Loretta Rush, Tippecanoe Superior Court said children generally have 2 or 3 caseworkers over the life of their case – but one judge. Courts must keep the responsibility for children in their community.

Leslie Rogers, GAL/CASA Director, stated this bill would adversely affect the statute passed last year requiring a CASA to be appointed in every case.

Susan Boatwright, Marion County Chief Juvenile Public Defender, said the DCS does not have enough caseworkers in Marion County to handle all the Delinquency cases under HB 1001. She said the same weight would not be given to public defender recommendations, which would prevent her speaking adequately for the child. HB 1001 also blurs the constitutional line between branches of government.

Cathy Graham, Executive Director, Indiana Association of Residential Child Care Agencies, supports the state funding included in this legislation. She expressed concern over a single state payer of all bills. Clara Anderson, Children's Bureau, and representing the Children's Coalition of Indiana was pleased the legislature was addressing this issue and support the state paying for children's services.

JauNae Hanger, Past Chair, Civil Rights of Children Committee, Indiana State Bar Association read a statement in opposition to HB 1001 adopted by the Board of Governors of the ISBA. It said the ISBA opposes this bill "... which may compromise or diminish the independent role of the judiciary in serving the proper judicial function in determining what is in the best interest of the child..."

David Botoroff, Association of Indiana Counties voiced support for the state picking up welfare costs. He said the state should pay these costs since DCS workers are state workers. Tammy Grubbs, Shelby County Council noted the increase in DCS costs in her county and wanted the state to take over the budget.

The chair took no vote on the bill and announced the bill would be held for two weeks.